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TRANSCRIPT OF PROCEEDINGS

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN RE APPLICATION OF:
RICHARD RICHARDS
Sierra Vista, Arizona

DOCKET NO. 93-176

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In Re Application of:)
RICHARD RICHARDS)
Sierra Vista, Arizona)
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Docket No. 93-176

The above-entitled matter came on for hearing pursuant to notice before Judge Richard L. Sippel, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom Number 4, on Tuesday, December 7, 1993 at 10:02 a.m.

APPEARANCES:

On behalf of Richard Richards:

THOMAS SCHATTENFIELD, Esquire
GERALD P. McCARTIN, Esquire
Arent, Fox, Kintner, Plotkin and Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

On behalf of the Mass Media Bureau:

ROBERT ZAUNER, Esquire
2025 M Street, N.W.
Room 7212
Washington, D.C. 20554

I N D E X

<u>WITNESS</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Richard Richards

By Mr. McCartin	9			
By Mr. Zauner		43		
By Mr. McCartin			146	

E X H I B I T S

<u>RICHARDS</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
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MASS MEDIA BUREAU

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Hearing Began: 10:02 a.m. Hearing Ended: 4:35 p.m.

Lunch Began: 12:22 p.m. Lunch Ended: 1:35 p.m.

P R O C E E D I N G S

JUDGE SIPPEL: We're on the record. I'm going to take appearances first. On behalf of -- I'll refer to him as the Respondent or the Applicant, Mr. Richards. On behalf of Mr. Richards?

MR. McCARTIN: Gerald P. McCartin and Thomas Schattenfield from Arent, Fox, Kintner, Plotkin and Kahn.

JUDGE SIPPEL: And Mr. Zauner, on behalf of the Bureau?

MR. ZAUNER: Robert A. Zauner on behalf of the Mass Media Bureau.

JUDGE SIPPEL: I want to state at this time -- I just want to state something for the record before we proceed this morning in the manner in which I directed the pretrial in this case. There's been no prehearing conference called by myself for two reasons, one because counsel -- both counsel have kept me apprised of their discovery and there doesn't seem to be -- there was nothing of such a concern that required me to call a conference and secondly, Mr. Richards, I understand, is being represented without fee by Mr. Schattenfield and Mr. McCartin and I'm trying to keep the cost down as best I can.

So we will have to consider some preliminary matters this morning, but this is the day of the hearing and we're going to hear evidence that's going to be the basis for an

1 initial decision. One question I have for Mr. McCartin or Mr.
2 Schattenfield. Has there been a statement of completion of
3 publication filed with the Commission under 73.3594?

4 MR. MCCARTIN: Your Honor, subject to checking our
5 files, I believe that such a statement was filed prior to the
6 time that we assumed representation, but I need to check our
7 file on that.

8 JUDGE SIPPEL: Do you know anything about that, Mr.
9 Zauner?

10 MR. ZAUNER: No, I don't, Your Honor.

11 JUDGE SIPPEL: Well, I want to be sure that that
12 gets buttoned down, obviously not this morning, but I raise
13 that as a preliminary matter. Secondly, there was a question
14 raised with respect to an informal suggestion that there might
15 be a camera in the courtroom. Is that -- what's the status of
16 that?

17 MR. SCHATTENFIELD: The status of that is we're not
18 going to do it. It was too complicated to do it and get it
19 without intruding on the Court.

20 JUDGE SIPPEL: I appreciate that, Mr. Schattenfield.
21 But you know, for the record, as I said, I would consider
22 reasonable usage. But if that's the end of the issue, let's
23 move on. Are there any stipulations up front such as with
24 respect to the operation of the station without any FCC
25 violations?

1 MR. McCARTIN: Your Honor, there have not been any
2 agreements yet on that. I -- perhaps before the proceeding
3 ends, we can -- we had talked about it preliminarily, but
4 haven't really reached any agreement on it since then.

5 JUDGE SIPPEL: All right. Well, I'd like to see
6 that pursued. If we can get that in before we close the
7 record here because one of the -- one of the issues on
8 rehabilitation would be -- or rather on mitigation would be
9 the overall FCC compliance record of the applicant -- the
10 licensee. When does -- this is a renewal that has -- this
11 case has been put into renewal by the Bureau. Is there --
12 what is the end of the license period under which he's
13 operating now? Do you have a month and year?

14 MR. McCARTIN: My recollection is December '92, but
15 I don't have that right in front of me.

16 JUDGE SIPPEL: I'm just trying to give myself a fix.
17 That's all.

18 MR. ZAUNER: The file number is 92-1116 which would
19 make it November 16, 1992.

20 JUDGE SIPPEL: It's not that critical. I thought
21 maybe if somebody could tell me up front. I just want to just
22 get a feel for the procedural posture of the case. I mean,
23 obviously this is a serious issue as to whether or not his
24 license is going to be renewed. When does the -- the
25 probation period expires, by my count, in 1997. Is that

1 correct?

2 MR. McCARTIN: It was five years from the date of
3 sentencing and I believe that was --

4 MR. RICHARDS: July --

5 MR. McCARTIN: -- July of '92. So it would be '97,
6 yes, Your Honor.

7 JUDGE SIPPEL: Be careful. Mr. Richards is in the
8 courtroom. Don't speak up because the reporter won't know
9 who's talking. They have a microphone system here. You'll
10 have plenty of opportunity to talk, Mr. Richards. The burden
11 of proof and the burden of proceeding, since this is a renewal
12 case, are on the applicant, Mr. Richards. The specific issues
13 with respect to mitigation and rehabilitation are -- well, we
14 can get to that as the evidence is offered.

15 But essentially, as I see the presentation of this
16 case, it has to do with establishing for -- as a matter of
17 record, the conviction and then the rest of the evidence is
18 really going to be with respect to mitigation and
19 rehabilitation and whatever rebuttal the Bureau has. I mean,
20 that's a cryptic statement, but that's essentially what we're
21 here to do today. All right, you have the burden -- is it Mr.
22 Schattenfield or Mr. McCartin, are you going to present the
23 case?

24 MR. McCARTIN: Yes, Your Honor.

25 JUDGE SIPPEL: Mr. McCartin. Yes, sir.

1 MR. SCHATTENFIELD: I'll help him if I can.

2 MR. McCARTIN: I value Mr. Schattenfield's
3 assistance.

4 JUDGE SIPPEL: You may proceed.

5 MR. McCARTIN: Your Honor, our first exhibit, we may
6 do better deferring it until Mr. Richards gets on the stand,
7 but I'll, just for the record, identify what has been marked
8 as Richard Richards' Exhibit R1 and this is Revised Statement
9 of Richard Richards and let me explain why this is called
10 Revised Statement of Richard Richards.

11 When Mr. Richards takes the stand, he will, before
12 attesting to the accuracy of the information in his exhibit,
13 cite certain minor changes to the information in the exhibit
14 and for the convenience of the Court and the Bureau, I have
15 retyped or have had retyped Mr. Richards' Exhibit R1 which is
16 now titled Revised Statement of Richard Richards so that the
17 record has a clean copy and I will, at this point, identify --
18 ask that this exhibit be identified and I'll hand to the
19 reporter one copy and to each of the Judge and the Bureau a
20 copy of this revised exhibit.

21 JUDGE SIPPEL: Why don't we -- this is going to be
22 the statement of Mr. Richards. Why don't we put Mr. Richards
23 under oath right now and have him identify it and we can move
24 it into evidence? And then you can proceed as you see fit,
25 Mr. McCartin. Mr. Richards, would you come forward, please,

1 sir?

2 (Whereupon,

3 **RICHARD RICHARDS**

4 having first been duly sworn, was called as a witness herein
5 and was examined and testified as follows:)

6 JUDGE SIPPEL: Please be seated, sir.

7 WITNESS: Should I get my book -- my copy of it?

8 MR. McCARTIN: Mr. Richards, do you have your -- a
9 copy of your exhibit prior to its being revised? If you would
10 bring that with you to the stand. Your Honor, a copy of Mr.
11 Richards' exhibit prior to it being revised has been exchanged
12 with the Bureau and with yourself at the exhibit exchange
13 date. My questions right now will be directed to Mr. Richards
14 in an effort to have him cite the places in that original
15 exhibit where changes are being made.

16 JUDGE SIPPEL: Let me just instruct the reporter
17 this document -- how many pages is it?

18 MR. SCHATTENFIELD: It's a one-page exhibit.

19 JUDGE SIPPEL: The one-page exhibit has to do with
20 financial information and then a cover sheet on top of that
21 and it's called the Revised Statement of Richard Richards.
22 The reporter will mark that at this time as Richards Exhibit 1
23 for identification.

24 (Whereupon, the document referred to
25 as Richards Exhibit Number 1 was

1 marked for identification.)

2 JUDGE SIPPEL: All right, Mr. McCartin.

3 DIRECT EXAMINATION

4 BY MR. McCARTIN:

5 Q Mr. Richards, would you please state your name and
6 address for the record?

7 A My name is Richard Richards with an S. I live in
8 Saint David, Arizona on Highway 80 and Curtis Flats Road.

9 MR. McCARTIN: Your Honor, has Mr. Richards been
10 sworn in?

11 JUDGE SIPPEL: Yes, he has.

12 BY MR. McCARTIN:

13 Q Mr. Richards, you have before you a statement which
14 was prepared and exchanged in this proceeding as part of your
15 written direct case titled Statement of Richard Richards.

16 A Yes, I do.

17 Q Are there any changes in that statement which you
18 would like to point out to the Court at this time?

19 A Yes. On the first page, Paragraph A, I currently
20 live on eighty acres.

21 Q Excuse me, but is this the last sentence of
22 Paragraph One on Page One?

23 A Yes, it is. I currently live on eighty acres total
24 and farm twelve acres of the eighty in organic vegetables,
25 primarily carrots in Saint David, Arizona, not Hereford.

1 Q Let me show you what has been marked as Richard
2 Richards Exhibit R1, Revised Statement of Richard Richards,
3 and ask you whether the final sentence in Paragraph One of
4 that revised statement is accurate.

5 A Yes, it is.

6 JUDGE SIPPEL: All right. Let me just back up just
7 a minute here. Let me just be sure I understand. What the
8 reporter has marked for identification is the revised
9 statement.

10 MR. McCARTIN: That's right.

11 JUDGE SIPPEL: There is no -- there has not even
12 been marked for identification the statement of Mr. Richards
13 as it had been earlier exchanged. So there really is no need
14 to go through that. All we have to know is that what is
15 marked as Exhibit Number 1 today is going to be his testimony
16 on which he is going to be cross examined.

17 MR. McCARTIN: Fine. We'll proceed that way. Thank
18 you, Your Honor.

19 BY MR. McCARTIN:

20 Q Mr. Richards, would you review what has been marked
21 as Richard Richards' Exhibit R1, Revised Statement of Richard
22 Richards and tell me whether it is true and correct to the
23 best of your knowledge?

24 A Okay.

25 JUDGE SIPPEL: Let's go off the record while he

1 looks at the statement.

2 (Off the record.)

3 (On the record.)

4 JUDGE SIPPEL: While the witness has been reviewing
5 this exhibit, that is Richards Exhibit 1 for identification,
6 Counsel have been discussing the changes that have been made.
7 Mr. Zauner has indicated he's prepared to go forward even with
8 the changes. When I say changes, I mean changes with respect
9 to what was exchanged versus what he's going to testify to
10 today, none of which appear to be major changes.

11 And at my instruction, the reporter will change what
12 has been identified as Exhibit One to Richards Exhibit R1
13 which is the list of construction costs, operating expenses,
14 monthly revenue will be changed to Attachment One to avoid any
15 confusion. Are you ready to proceed on this then, Mr. Zauner?

16 MR. ZAUNER: Yes, Your Honor.

17 JUDGE SIPPEL: Are you -- do you have something
18 further on your --

19 MR. McCARTIN: Yes.

20 BY MR. McCARTIN:

21 Q Let me repeat the question, Mr. Richards. Have you
22 now reviewed your statement as revised?

23 A Yes, I have.

24 Q And are the statements set forth therein true and
25 correct to the best of your knowledge?

1 A Yes, they are.

2 MR. McCARTIN: I would like to offer this exhibit
3 into evidence, Your Honor.

4 JUDGE SIPPEL: Any objection?

5 MR. ZAUNER: Yes, Your Honor. I have some specific
6 objections. With regard to Page One --

7 JUDGE SIPPEL: I'm sorry. I apologize. There is
8 another person in the courtroom. Will there be other
9 testimony offered that is going to coincide with this witness'
10 testimony?

11 MR. McCARTIN: No, Your Honor. This -- the other
12 person in the courtroom is an observer, but not -- will not be
13 a witness in this proceeding.

14 JUDGE SIPPEL: All right. You may proceed, Mr.
15 Zauner.

16 MR. ZAUNER: Paragraph B, The Station, subparagraph
17 two, the second sentence to the end of the paragraph. I guess
18 I would like to know the purpose for which that is being
19 offered.

20 MR. McCARTIN: The second sentence of Paragraph Two?

21 MR. ZAUNER: Beginning with, "This station
22 rebroadcasts the signal of Station KTNB-TV..." and what is the
23 relevance of that? I would object on the grounds of
24 relevance.

25 JUDGE SIPPEL: Just that one sentence?

1 MR. ZAUNER: No, to the end of the paragraph.

2 JUDGE SIPPEL: Oh, to the end of that paragraph.

3 MR. ZAUNER: Right.

4 JUDGE SIPPEL: All right. So you don't have any
5 objection to him stating that he's the licensee of the low
6 power television station in Sierra Vista, but it's everything
7 after that that you object to in that paragraph.

8 MR. ZAUNER: That is correct.

9 MR. MCCARTIN: Your Honor, this information, first,
10 is obviously essential information to describe the nature of
11 the television station that Mr. Richards operates. It is
12 necessary information to support the mitigation showing --
13 part of the mitigation showing that we're making on behalf of
14 Mr. Richards.

15 There is testimony that will be offered in this
16 proceeding addressing the -- specifically the nature of the
17 programming, the value of that programming, to the community
18 of license and to the people in the community of license, and
19 Mr. Richards' role in bringing that programming to the
20 community and therefore, this information -- without this
21 information, the rest of that testimony would be -- would not
22 be understandable.

23 MR. ZAUNER: Your Honor, I renew my objection. What
24 I am hearing is that this information is being offered to
25 establish the meritorious nature of the station's programming.

1 There have been a number of cases in Commission history in
2 which it has been determined that where there is a renewal
3 license at stake, that such information will not be received
4 absent the addition of a specialized meritorious programming
5 issue. There has been no issue requested here and this
6 evidence therefore will not be received -- should not be
7 received.

8 I would cite Norjud, N-O-R-J-U-D, Broadcasting,
9 Inc., Minville, Oregon, for renewal of license for radio
10 station KCMC and that's at 55 FCC 2nd 808 and it's a 1975 case
11 and I would also cite Lum, L-U-M, A. Humphries at 12 FCC 2nd
12 978 and that's a 1968 case and both of these cases stand for
13 the proposition that programming cannot be used to mitigate a
14 wrongdoing by a licensee unless there's first a meritorious
15 programming issue added to the proceeding.

16 MR. McCARTIN: Your Honor, we are -- the purpose of
17 this is to show that Mr. Richards is -- his station is
18 operating in the public interest and the basic purpose of the
19 mitigation showing is to demonstrate that the licensee, not
20 withstanding the misconduct which is already a matter of
21 record, is capable of operating truthfully, reliably, in
22 compliance with the Commission's rules, and in the public
23 interest and this -- there is a significant amount of
24 testimony here that reflects that the community believes he is
25 operating in the public interest and it reflects, Your Honor,

1 his character as well.

2 We are charged here with convincing the Commission
3 that Mr. Richards' character is such that he -- it mitigates
4 his misconduct and I should say that in the RKO Case,
5 specifically the -- and let me give you a cite for this, 5 FCC
6 Record 642 at Paragraph 21, the applicant, in this case a
7 licensee, was provided the opportunity to submit a showing of
8 good character in connection with mitigation of his past
9 misconduct.

10 And in particular, in Mr. Richards' case, the fact
11 that he is offering this service to the community which
12 otherwise wouldn't be available to the community in that he
13 has performed certain acts that benefitted the community in
14 connection with the operation of the station are reflective of
15 his good character in the community and the -- Clause Two of
16 Paragraph 21 lists as one of the criteria, "The applicant
17 enjoys a reputation for good character in the community."

18 The basis for Mr. Richards' reputation, among
19 others, in the community for good character is the good work
20 that he's doing through broadcasting this network to the local
21 residents who otherwise wouldn't have it. And if you take
22 that away from Mr. Richards in evaluating his -- whether or
23 not he's rehabilitated or not withstanding his past
24 misconduct, he's suitable to be a licensee, you've taken away
25 the meat of Mr. Richards' ability to convince this Commission

1 that he is now operating in the public interest and that he's
2 capable of doing so in the future.

3 JUDGE SIPPEL: Well, I'm not -- I'm more cognizant
4 with the RKO precedent than I am with the two that were cited
5 by Mr. Zauner and I will take a look at those authorities over
6 lunch. But let me -- for the time being anyway, I'm going to
7 overrule the objection and my reason being is that first of
8 all, this Applicant stands to lose a license.

9 And within the bounds of reasonableness, I'm going
10 to permit him to present his case, basically as he sees fit
11 with one caveat, however, and that is that I know there's a
12 lot of testimony in the statements with respect to religious
13 beliefs and religious foundations with respect to the
14 programming and that's got nothing to do with being critical
15 of the programming.

16 But you've put your finger on something which I
17 think is -- goes right to the heart of the matter, Mr. Cartin
18 -- Mr. McCartin, and that is the good character issue and the
19 opinion evidence with respect to the good character issue and
20 how the Federal Rules of Evidence handled that and I'm going
21 to be guided to a great extent by a decision, Government of
22 the Virgin Islands versus Peterson.

23 It's a 1977 Third Circuit decision at 553 F 2nd,
24 Pages 324 -- particularly at Page 328 where the Court of
25 Appeals ruled out from consideration with respect to character

1 evidence of religious affiliation and beliefs to the
2 witnesses, one of whom was the defendant in that case. I'm
3 going to be using that as a guideline which doesn't mean to
4 say that I'm not going to -- that I'm going to exclude every
5 lick of evidence with respect to religious beliefs.

6 But my consideration of it will be minimal to say
7 the least in terms of whether or not there is good character
8 evidence with -- sufficient good character evidence with
9 respect to this witness and the meeting of the burden. I
10 don't think -- I think it's an easy distinction to make. I
11 haven't mentally made an easy distinction of it. I don't
12 think it's going to prejudice you from putting on the case
13 that you want to put on.

14 But I am going to be guided by what I find the
15 ruling to be in that particular case. That, by the way, is --
16 I don't mean to just say that I've -- I like that case. It is
17 a case which is interpreting Federal Rules of Evidence Number
18 610. That is Rule 610. So there is a specific Rule of
19 Evidence on this point and I will look at the other
20 authorities over lunchtime and if I'm convinced that Mr.
21 Zauner is right as a matter of law and that I don't have any
22 choice, I'll revisit the issue.

23 But right now, for the reasons I've stated, I am
24 going to deny the motion or the objection is overruled. You
25 may proceed and as I say, I am going to give this witness, to

1 the extent that I can, the opportunity to present his case
2 pretty much as he sees fit. Okay, Mr. McCartin. Mr. Zauner?

3 MR. ZAUNER: I guess it's probably up to me to
4 continue making objections. I think that's where we began.

5 JUDGE SIPPEL: You're right.

6 MR. ZAUNER: Your Honor, I have other objections
7 based upon the same argument to information contained in
8 Exhibit One. Maybe for the record I should just point them
9 out and then we won't have any further argument, but show you
10 as I go along where they are.

11 JUDGE SIPPEL: All right. If you'd do that, sir.

12 MR. ZAUNER: I believe all of Paragraph Three
13 relates to meritorious programming.

14 JUDGE SIPPEL: Well -- I'm sorry. Again, I don't
15 want to cut you off, but in fairness to you, I'm not receiving
16 this as meritorious programming. He is not going to get a
17 credit for meritorious programming.

18 MR. ZAUNER: I understand that, but what I'm saying
19 though is that to the extent that the programming of the
20 station can be considered in mitigation of the allegations
21 which have brought us to this hearing today, I would object to
22 the extent that it's based upon programming information and
23 this is --

24 JUDGE SIPPEL: Well, I don't want to get into an
25 argument on this, but how is he going to explain for me in the

1 record what is going on down there with the station if he
2 doesn't explain what -- that he's putting on some kind of a
3 program, that the community had some kind of a recognition of?
4 How is he going to mitigate -- how is he going to present
5 mitigation if he can't do at least that much?

6 MR. ZAUNER: Well, there are other things that he
7 can show in mitigation.

8 JUDGE SIPPEL: I know. But I'm saying -- but aside
9 from the other things, how about this?

10 MR. ZAUNER: That's a question that I think that
11 Your Honor's going to have to take a look at the cases on and
12 make a decision as to whether, as a matter of law, that
13 information can come in. All I'm doing now is identifying
14 those -- I'm not trying to argue it. I'm just trying to
15 identify those places in the exhibit where I believe that
16 question arises. So I'm not -- and I understand your ruling
17 if you've already ruled on it. But this way, the record will
18 reflect where at least I believe there to be this kind of
19 programming material which if I am correct, should not be
20 included.

21 JUDGE SIPPEL: I'll take a look at it. I guess I
22 was just trying to convince you that maybe -- go right ahead.
23 Go right ahead.

24 MR. ZAUNER: In Paragraph Five, the third sentence
25 which begins with the word "this" and ends with the words

1 "God's word". I have an objection to the next sentence which
2 begins with, "I later learned that TBN ..." I would submit
3 that the business arrangement that Mr. Richards has with TBN
4 is irrelevant to this -- to the issues in this proceeding.

5 JUDGE SIPPEL: Let me just focus on that. Is it
6 just that one sentence in Paragraph Five?

7 MR. ZAUNER: Actually it's two sentences. The next
8 sentence which says, "I entered into such an agreement with
9 TBN ..." would also be included in my objection.

10 JUDGE SIPPEL: All right. Mr. McCartin?

11 MR. McCARTIN: Your Honor, this paragraph and this
12 passage that Mr. Zauner has cited is directed towards Mr.
13 Richards' motive for operating his station, that this is
14 designed to show that Mr. Richards did not have a profit
15 motive. He had a motive to serve the community or what he
16 understood the needs of the community to be and this is merely
17 designed to give evidence of that. So I think it's -- while
18 its descriptive of a business relationship, the purpose is
19 perfectly proper.

20 JUDGE SIPPEL: Mr. Zauner, can you respond to that?

21 MR. ZAUNER: I don't think his motives from
22 operating the station are mitigatory of the charges that have
23 been -- of which he's been convicted which are the subject of
24 this proceeding.

25 MR. McCARTIN: Your Honor, if I may be heard. The

1 core of this inquiry is Mr. Richards' character and his
2 motives for providing a service to the community are essential
3 to his character.

4 JUDGE SIPPEL: I'm going to -- again, I'm going to
5 overrule that objection for -- partly for the reason that I
6 stated earlier and also, again, I think it's -- to me it's
7 relevant. Let me put it in a different context. If a renewal
8 applicant came in here to testify as to why he should keep his
9 station when he's been convicted of a crime and he's not able
10 to explain in a businesslike way what he's going with the
11 station, it seems to me he's in a worse situation than
12 somebody who can come in and explain, in a businesslike way,
13 that he's acting as a responsible citizen with respect to the
14 station.

15 The fact that he's -- you know, what the nature of
16 the programming might be is really irrelevant. The point is
17 that he's got a program, he's putting it on, and he's got a
18 business plan in which he's going to be -- which he has
19 carried off in the past and he's going to carry it off in the
20 future. Whether he does it for a profit or not for a profit
21 is really not all that relevant.

22 The point is he's got a business plan and I think
23 that that is relevant in terms of the -- as a mitigation -- as
24 a point in mitigation. That's point number one and point
25 number two is I don't view mitigation as taking isolated

1 ingredients and saying this is relevant and this is not
2 relevant. I think that the mitigation comes -- the more
3 significant mitigation is, looking at the whole factual
4 situation as a package, if you will, with perhaps some
5 weaknesses in the package.

6 But basically, we're looking at the situation -- I'm
7 going to see the situation as a whole and not in just an
8 accumulation of the parts. So I think that if we start
9 cutting things out from under the testimony, I'm not going to
10 -- the record, not me personally, but the record is not going
11 to show the full picture.

12 So -- but that does not undercut your ability to
13 argue weight and continue to argue relevance certainly. So I
14 think that this is a good procedure, that you continue to note
15 all your objections this way, Mr. Zauner. You may proceed,
16 sir.

17 MR. ZAUNER: Your Honor, I would object to the rest
18 of the paragraph which concerns Exhibit One on the same
19 grounds and I presume your ruling would be the same.

20 JUDGE SIPPEL: All right. Now, let's be sure --
21 Exhibit One, that's going to be changed in this -- for record
22 purposes as Attachment One.

23 MR. ZAUNER: Attachment One. You're correct, Your
24 Honor.

25 JUDGE SIPPEL: All right. Mr. McCartin?

1 MR. McCARTIN: Your Honor, yeah, I believe that Mr.
2 -- the nature of Mr. Zauner's objection is the same as the
3 earlier one and my response would be the same and would track
4 the reasoning that you just articulated.

5 JUDGE SIPPEL: My ruling would be the same, so
6 that's overruled, too.

7 MR. ZAUNER: With regard to Paragraph Six on Page
8 Three, the sentence beginning with, "I am currently working,"
9 and the next sentence, "This programming would include," I
10 would object to as speculative.

11 MR. McCARTIN: Your Honor, I believe that this is --
12 what Mr. Zauner is objecting to, whether it's speculative or
13 not, will become apparent based upon Mr. Richards' testimony
14 which Mr. Zauner's entitled to elicit on cross examination.

15 JUDGE SIPPEL: I'm overruling the objection.

16 MR. ZAUNER: I object to the rest of the paragraph
17 on the grounds that it relates to the merit -- supposed
18 meritorious programming of the station and it is also in part
19 speculative.

20 JUDGE SIPPEL: The speculation part goes to the
21 weight and as I say, there is not an issue here of special
22 programming. There'll be no finding on special programming
23 and there'll be no credit for special programming. So for
24 those reasons, that objection is also overruled and my
25 reasoning is based on what I've said earlier.

1 MR. ZAUNER: Section C, Circumstances Underlying
2 Conviction, Paragraph Seven, at the bottom of Page Three, the
3 sentence beginning with the word "first". I would object on
4 the grounds that it's irrelevant. Mr. Richards was convicted
5 of possession with intent to distribute and whether he sold or
6 gave it away or did anything else with the drugs is
7 irrelevant. The facts in this proceeding have been determined
8 insofar as the distribution -- possession with intent to
9 distribute charge goes.

10 MR. McCARTIN: Your Honor, if I may be heard on that
11 objection. I think that whether or not the -- Mr. Richards
12 sold marijuana or gave it away in a particular instance is
13 extremely relevant to the weight that the Court will attach to
14 his conviction vis-a-vis Mr. Richards' qualifications to be a
15 licensee.

16 The hearing designation order cites the Commission's
17 policy statement on drug trafficking and refers to the callus
18 disregard that drug trafficking evidences for the rights and
19 well-being of others and to the extent there is a range of
20 behavior within the category drug trafficking, that will bear
21 significantly on the seriousness for FCC purposes of this
22 misconduct.

23 And if the basis for the misconduct is one instance
24 of distributing for no consideration or intending or agreeing
25 to give to someone else for no consideration marijuana, that's